The Demise of the Debtors' Prison:

Market Development, State Formation, and the Moral Politics of Credit[*]

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ABSTRACT

This article explains the historical abolition of imprisonment for debt. In the late eighteenth century, creditors' right to arrest and detain debtors for default was taken for granted. By the middle of the nineteenth century this power was widely and permanently revoked. Using archival evidence from New York, this article shows how changes in the structure of markets and the state generated new, conflicting moral views of borrowing, lending, and default. Successive commercial and political groups leveraged moral arguments to reform debtor law. The analysis illustrates an approach to explaining the relationship between moral and institutional change. The history of the debtors' prison has implications for theories of legal modernization as well as for recent trends in debt collection and penal debt.

1. INTRODUCTION

Between the late eighteenth and mid-nineteenth centuries, debtor law in the United States underwent a remarkable transformation. Consider two prominent cases of default. When William Duer, a former Continental Congressmen and New York State Senator, stopped paying his debts on March 9, 1792, he was imprisoned in New York City's debtors' jail. His creditors would gather to throw stones at his cell. After seven years of incarceration, he was released only to his death bead (Klein 1920:33; Ciment 1992:42; Mann 2002:146). By contrast, when in 1842 James Watson Webb, an influential editor and politician, defaulted on debts likewise accumulated in land speculation, he joined more than 8,000 other failed New York debtors who filed for voluntary bankruptcy, forfeited their assets, discharged their debts, and never feared imprisonment. Ironically, Webb would go on to make a small fortune as the official issuer of New York City's bankruptcy notices (Balleisen 2001:63–4, 140, 234).

A mere fifty years separate these two worlds of debt default. What historical process links them? As a window into the modernization of debtor law, this article focuses on its most central event—the abolition of so-called "imprisonment for debt" (Peebles 2013). Standard accounts of debtor law emphasize the social organization of risk and uncertainty and the social distribution of political power. This article shows that both approaches fail to explain this reform. Instead, it offers archival evidence that broadly supports Durkheim's ([1893] 2014) theory of legal modernization. As the development of credit markets drew more diverse and more distant actors into greater financial interdependence, merchants helped reconstruct debt collection in terms of restitutive principles rather than retributive ones.

However, the history of the debtors' prison also suggests two necessary revisions of Durkheim's theory. First, it asserts a correlation between forms of solidarity and legal forms

without accounting for the process by which changes in the former actually lead to changes in the latter. This article borrows from contemporary theories of morality and institutional change to illustrate such a process (Fligstein and McAdam 2012; Abend 2014). In two successive episodes, transformations in the social and political structure of creditor–debtor relations destabilized widespread and deeply held moral thinking about borrowing, lending, default and debt collection. In turn, commercial and political groups vied to reform the law of financial contract enforcement according to new, competing moral ideas. The article therefore improves Durkheim's theory by illustrating a process of moral politics that provides a mechanistic link between forms of solidarity and legal forms (Hedström and Swedberg 1998).

Second, this article shows that the restitutive conception of debt collection that emerged from credit market development was a necessary but insufficient condition of the abolition of imprisonment for debt. The pacification of credit exchange—understood as the eradication of legitimate corporal force among civil economic actors—required changes in the polity and the state (Elias [1939] 2000). The moral politics of credit includes competition for the authority to define, evaluate, and punish financial immorality. The debtors' prison was abolished first in New York because it was there that state actors consolidated moral authority over credit markets and leveraged this authority to secure a monopoly on legitimate violence in the market (Weber [1922] 1978).

This article first outlines the history of imprisonment for debt and alternative explanations for it, before developing a synthetic theoretical account. It then explains the empirical case selection before presenting evidence and analysis. It concludes by discussing implications for economic-sociological and criminological research.

2. EXPLAINING VARIATION AND CHANGE IN DEBTOR LAW

What exactly is "imprisonment for debt"? In order to clarify its features, I also refer to it as "civil incarceration for debt default" (CIDD). Along with insolvency and bankruptcy laws, laws sanctioning CIDD were part of what I call "debtor law," the subset of contract law regulating the enforcement of agreements between creditors and debtors. They authorized civil lenders to secure warrants for the arrest and detention of borrowers when they defaulted on privately contracted debts. Defaulters were held in public jails until they repaid or some relief law intervened. Unlike criminals, incarcerated debtors had no recourse to procedural due process, were not allowed to work, and were not subsisted by the state.[1] To be clear, the practices described in this paper are no longer legal in the United States—debtors said to be "imprisoned for debt" today are usually detained in contempt of court, most often for the non-payment of penal debts (Harris, Evans and Becket 2010, 2011; Harris 2016).[2]

The abolition of imprisonment for debt was a major transformation in debtor law. CIDD was first authorized by English statute in the thirteenth century, and became a central institution in early capitalist credit markets (Wennerlind 2011). By the mid-eighteenth century, American colonists took CIDD for granted, and every colony and state permitted it (Mann 2002:79). With the expansion of American credit markets in the late eighteenth and early nineteenth centuries, debt default, debt litigation, and imprisonment for debt all became more common. An average of one in three heads of household living in the early decades of the nineteenth century were sued for debt default in their lifetime (Coleman 1974:287). By the 1820s, there were in some counties as many as one imprisoned debtor for every ten households (Fox 1919:353; Ciment 1992:139). In 1829, the leading prison reform group estimated that some 75,000 debtors were imprisoned

[1] For the legal history of CIDD see Cohen (1982). For accounts of early American practice, see Mann (2002).
[2] The specific legal change in question is the prohibition of "body attachment," or the use of the writs of *capias ad satisfaciendum* and *capias ad respondendum.* These authorized arrest and detention in legal actions for the recovery of money due upon contracts, express or implied.

annually nationwide (Prison Discipline Society [1830] 1855:252). Despite its widespread use, over the nineteenth century most American states moved to abolish CIDD, and most European jurisdictions followed suit (Table 1). Why did societies forsake the debtors' prison?

2.1 The Social Organization of Risk and Uncertainty

CIDD was an element of contract law. One approach to explaining contract law, associated most closely with economic sociology, emphasizes its role in mitigating risk and uncertainty (Weber 1978; Swedberg 2003). On their own, contracts cannot ensure that voluntary exchange partners will behave—and be able to expect others to behave—in such a way that they regularly realize mutual benefit (Greif 2000). Rather, contracts must be "submitted to a regulatory force that is imposed by society and not by individuals" (Durkheim 2014:165–6). In the case of credit exchange, debtor law is one such regulatory force, reducing uncertainty in credit exchange by assigning reliable consequences to exchange outcomes, and reducing risk by incentivizing voluntary repayment and coercing involuntary repayment (Knight [1921] 2002). Importantly, debtor law operates alongside other elements of the so-called "non-contractual basis of contract." Personal relationships cause debtors to perform contracts in the interest of maintaining the fragile yet significant benefits of trust (Granovetter 1985). Norms about debt encourage repayment by grafting non-economic penalties onto failures to reciprocate (Mauss [1925] 2000; Graeber 2011). When deeply internalized, norms operate without actual sanction threat because debtors seek to avoid the psychic costs of a bad conscience (Nietzsche [1887] 1997; Weber [1905] 2002). Societies enable credit exchange by managing risk and uncertainty, and do so by embedding exchange in different combinations of these institutions, networks and norms (Beckert 2013).

Conceptualizing debtor law as an element of the non-contractual basis of contract suggests that its forms vary according to (i) the kind and degree of risk and uncertainty and (ii) the availability of alternative means for reducing them. For example, the prevalence of screening or enforcement mechanisms depends in part on the embeddedness of credit exchange in interpersonal networks (Guseva and Rona-Tas 2001). Likewise, the character of enforcement mechanisms depends in part on the social composition and distribution of capital (Tilly 1992). Moreover, as market and state actors develop new techniques for enforcing contracts and invent new strategies for monitoring behavior and pricing risk, older debtor laws may obsolesce (Marron 2007; Fourcade and Healy 2013; Deville 2015). One may expect, therefore, that the function of CIDD was to deter default or coerce repayment, and that the abolition of CIDD was a response to changes in the social sources of risk and uncertainty in credit markets or in the availability of social, legal, or technological substitutes for CIDD such as contract devices or bankruptcy laws.

2.2 The Social Distribution of Political Power

Another approach, associated more closely with political economy, accounts for contract laws in terms of asymmetries of power rather than of information (Marx and Engels [1846] 1998). In the case of credit exchange, debtor law distributes advantages among creditors and debtors even as it enables mutually beneficial exchange (Delaney 1992; Carruthers, Babb, and Halliday 2001). As a result, creditors, debtors, and other classes and professional groups usually hold conflicting policy preferences, and may engage in collective struggles over laws that regulate the enforcement of debts (Knight 1992; Posner 1997).

Conceptualizing debtor law as an object of class politics suggests that it varies according to the social distribution of political power. "Legally privileged groups" institutionalize "legal

empowerment rules" that substantively enhance their position in formally free and equal credit exchange (Weber 1978:340, 730; cf. Marx [1867] 1992:279–280). Debtor law can therefore be explained in terms of the political cohesion and strength of creditors and debtors, their subgroups or their legal intermediaries (Carruthers and Halliday 1998; Prasad 2012; Trumbull 2014). This suggests that CIDD was at one point the policy preference of a legally dominant class, and that its abolition followed the economic or political disempowerment of that class relative to another that opposed it.

3. MARKET DEVELOPMENT, STATE FORMATION, AND MORAL POLITICS

Below, I show that neither risk and uncertainty nor class politics adequately explain the global sequencing of the abolition of imprisonment for debt and the process leading to abolition in New York State. Here, I develop a theoretical approach that better accounts for the evidence. It combines elements of Durkheim's theory of legal modernization with contemporary theories of morality, institutional change, and state formation.

3.1 Morality and Legal Change

Durkheim (2014) argued that as societies become more diverse, interactive, and interdependent, social solidarity changes in kind, from "mechanical" to "organic." Solidarity, however, is "a wholly moral phenomenon which by itself is not amenable to exact observation and especially not to measurement" (p. 52). One can, however, infer it from its "visible symbol"—the law. According to Durkheim, the increasing proportion of restitutive laws relative to retributive ones indexes the shift from mechanical to organic solidarity. This suggests a clear hypothesis about the evolution of debt collection—as the volume, density, interactivity and

interdependence of creditors and debtors increase, laws punishing default will decrease in proportion to those that help recompense creditors.

Durkheim's theory has motivated many cross-sectional analyses of the correlation between social structure and legal forms (Schwartz and Miller 1964; Erikson 1966; Baxi 1974; Wimberly 1973; Spitzer 1975; Inverarity 1976; Turkel 1979). However, the theory has informed fewer diachronic studies because it fails to specify concretely the process that links increasing socioeconomic interdependence to legal change (Merton 1934:326-7; Udy 1965; Pope and Johnson 1983:688; Sanders 1990:243–4). Indeed, a crude homology between morality and law suggests implausibly that as socioeconomic complexity increases, legal evolution follows directly and seamlessly. That said, Durkheim (2014:52–3) did admit that the law reflects morality only its "most stable and precise form." As a result, under conditions of rapid social change, the law may cease to "correspond" to the "present state of society." New social relations become increasingly "at odds with the old law," and as a result, "opposition breaks out." What if this scenario, which Durkheim unduly dismissed as "wholly exceptional" and "pathological," is in fact the normal process of legal change?

Relaxing Durkheim's assumptions about morality, law, and the relationship between the two helps supplement his correlational theory with current sociological thinking about processes of moral and institutional change. Durkheim understood morality as a set of shared norms (Durkheim [1895] 1982). By contrast, contemporary approaches tend to treat morality as integrated but heterogeneous (Hitlin and Vaisey 2013). Most productively, Abend (2014) suggests that societies possess distinct "moral backgrounds," or second-order moral grammars, which shape a limited but diverse set of particular, first-order moral beliefs (cf. Boltanski and Thévenot 2006). The moral background includes moral conceptual repertoires, methods of moral

reasoning and argumentation, and scope conditions for what is morally evaluable (Abend 2014:28–52). This conception of morality, when substituted for Durkheim's, allows for an account of moral change that is at once broad and deep, yet diverse and contested (cf. Zelizer 1985). Under conditions of relative stability in the structure of social relations, the moral background is likewise stable. Dominant groups successfully naturalize specific moral beliefs and inscribe them in the law. However, when the structure of social relations changes significantly, the moral background also shifts, creating possibilities for new kinds of moral arguments and foreclosing older ones (cf. Swidler 1986). Because they experience social change unevenly, different social groups draw variously upon the new moral background, adopting competing moral views of economic behaviors and institutions (Lamont 1992, 2000; Fourcade and Healy 2007). In turn, moral entrepreneurs among them compete to promote the wider adoption and institutionalization of particular moral beliefs (Zelizer 1979; Fligstein and McAdam 2012). They may work to preserve existing laws by reformulating their outmoded moral premises, or to leverage new moral beliefs for legal reform. The culmination of structural change and moral politics is a resettling of the second-order moral background and the legal institutionalization of a new set of first-order moral beliefs.[3]

[3] In this model, then, second-order moral backgrounds but not first-order moral beliefs are deterministic functions of the structure of social relations (Abend 2014:68). Hence, structural change may be said to necessitate moral and/or institutional change insofar as new second-order moral backgrounds exclude previously dominant first-order moral beliefs and corresponding institutions. Hence the eventual, effectively universal abolition of CIDD in American states and Western countries. But the process of moral entrepreneurship and moral politics matters to specific first-order moral outcomes and institutional corollaries, which are not structurally predetermined. Hence differences in the timing of abolition and in the attributes of institutional substitutes for the debtors' prison. The abolition of CIDD is properly understood as a transformation in the second-order moral background rather than a shift in first-order moral beliefs alone. This is for two reasons. First, although critics and defenders of CIDD differed in their first-order moral arguments about debt default and debt collection, styles of moral reasoning shared by both shifted in patterned ways over the period of analysis. The moral backgrounds at the beginning and end of the period of analysis have a relation of partial exclusivity: previously inconceivable moral arguments became central to legal reform, and once winning moral arguments became nonsensical. Second, although the moral politics of debt default and debt collection is surely ongoing, the styles of moral reasoning that now structure these debates are relatively fixed, and the institutions they underpin are relatively path dependent. At no point after CIDD's abolition have the

The dimensions of moral disruption, contestation, and reconstruction vary according to the social relations and institutions in question. With respect to credit markets and debtor law, two are often most salient. The first relates to the moral content and moral consequences of debt default. In credit exchange, not only capital but also promises are transacted (Carruthers and Kim 2011). Are these promises moral obligations or strategic wagers? The moral status of debts depends on whom they bind together, but also on historical and social context (Kus 2015). When debts express and reproduce relationships understood as integral to social order, they are more likely to be sacralized (Durkheim 1992; Mauss 2000; Graeber 2011). Their sacredness often rubs off on the instruments that express them, as with the "sanctity" of contracts (Suchman 2003). By extension, when debts are sacralized, default is understood as profanation—an immoral threat to social order (Durkheim [1912] 1995).

A second key dimension pertains to the moral causes of debt default and moral responsibility for it. Credit exchange is complex, and the true causes of debt default are difficult to determine (Carruthers 2005). Are failed debtors unable or unwilling to repay? Why? Although partly a problem of incomplete information, the growth of actuarial knowledge has done little to reduce disputation over the causality of default (Sullivan, Warren and Westbrook 2006). A rich literature in social psychology explains individuals' attributions of events in terms of personal or situational characteristics (Heider 1958; Kelley and Michela 1980). But another approach understands styles of causal reasoning in terms of social structure (Choi, Nisbett and Norenzayan 1999; Peng and Knowles 2003). That is, societies develop "principles of causality" that emerge from and evolve with changes in social relations and institutions (Dobbin 1994; cf. Wood 1982).

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moral arguments that sustained it been revitalized—the modern moral background of credit exchange precludes them.

Different causal accounts of events result in different understandings of moral responsibility for them (Heimer 1989; Douglas 1994; Giddens 1999; Ericson and Doyle 2003; Shamir 2008).

By categorizing actors and events, debtor law embodies ideas about what constitutes sacrilege, what causes it, and therefore who is morally deserving of reprimand or relief (Halliday and Carruthers 1996; Roberts 2014; cf. Steensland 2010). In contesting such laws, actors draw upon the moral background in diverse but patterned ways to frame moral content, moral causes, and moral consequences of debt and debt default.

3.2 Morality and the Monopolization of Violence

Supplementing Durkheim's account of legal modernization with contemporary theories of morality and institutions helps explain the *process* of moral politics that led to the abolition of imprisonment for debt. However, another addition is necessary. As I show below, the institutionalization of a restitutive conception of debtor law was insufficient (though necessary) to shutter the debtors' prison. Rather, progressive merchants preserved CIDD precisely by reconceiving it in restitutive terms. Abolishing CIDD amounted to a further step—the pacification of credit exchange, wherein legitimate violence between non-state actors was eradicated (Elias [1939] 2000). The sufficient structural conditions for the pacification of credit exchange are found not in the development of American credit markets, but rather in the development of the American polity and state.

Standard accounts of pacification treat it as the byproduct of state actors' increased material capacities for administration and war making (Weber 1946, 1978; Tilly 1985, 1992). However, a growing literature treats state formation as a thoroughly cultural process (Steinmetz 1999; Gorski 2003). This process includes state actors' cultivation of symbolic power—that is, the power to "constitute the given" (Loveman 2005; Bourdieu 2015). Of particular importance to

state actors' coercive monopoly is their ability to naturalize symbolic boundaries that define the objects of legitimate violence (Norton 2014). This suggests a useful synthesis between conceptions of the state as a nexus of legitimate force and as "the organ of moral discipline" (Durkheim 1992:72; cf. Corrigan and Sayer 1985). By elaborating criminal codes, judicial procedures and penal methods, state actors struggle to consolidate exclusive authority to define, evaluate, and punish official immorality. The pacification of elite economic actors results in part from the success of state actors in contests over who possesses moral authority in markets (cf. Polillo 2011).

The abolition of debtors' prisons illustrates the politics of moral authority in credit markets and its relationship to state formation. Abolishing CIDD did not itself entail material advances in state administrative or coercive capacity. From the outset of the practice, it was judges who granted warrants for debtors' arrest and sheriffs who imprisoned them.[4] Rather, structural trends toward political democratization and legal rationalization destabilized creditors' longstanding authority to decide what constituted immorality in credit markets, whether particular debtors had behaved immorally, and when in turn to wield state violence on debtors' bodies. State actors and civil allies struggled, ultimately successfully, to institutionalize in debtor law new symbolic boundaries that made civil discretion over corporal force immoral. Attention to this aspect of state building—the relationship between moral authority and legitimate violence—is necessary to explain the *sequencing* of the abolition of imprisonment for debt. CIDD ended first not merely where market development created the highest degrees of interdependence, but rather where well-developed markets combined with a well-developed liberal democratic state.

[4] A similar but more severe institution existed in France, where private citizens could petition for the issuance of "lettres de cachet" that authorized state detention without trial (Farge and Foucault 1982).

4. ANALYTIC STRATEGY

4.1 Data and Sources

This study draws upon a variety of sources from New York State. I use secondary historical sources to describe the evolution of everyday lending and collection practices and their macroeconomic and political context. But I rely principally on primary sources to reconstruct the interests and tactics of creditors, debtors, and activists who contested debt collection policy. These include: letters and editorials published in New York newspapers, accessed through Readex's America's Historical Newspapers; editorials published in regional trade magazines, accessed through HathiTrust; and pamphlets, reports, and surveys by social reform organizations accessed through the Google Books Library Project. In order to give a quantitative account of political efforts to preserve, reform, abolish, and revive CIDD, I tallied all relevant petitions to the State Assembly between 1810 and 1836, recorded in the Assembly's Journal, accessed at the New York Public Library. I also use multiple archival sources to illustrate the legal logic of debt and debt collection. Holdings at the New-York Historical Society (NYHS-M; NYHS-R) include contracts, affidavits, and other legal records that reveal the evolving thought of creditors, debtors, lawyers, and judges in rural Montgomery County and New York City. A variety of legislative documents accessed at the New York Public Library—legislative reports and testimonies, prison audits, and gubernatorial addresses—show how lawmakers reasoned through moral and political questions as they responded to new economic dynamics and political pressures.

4.2 Case Selection

The abolition of imprisonment for debt in New York is a good case for studying the modernization of debtor law for three reasons. First, New York represents a strong test of

institutional change. CIDD was more deeply ingrained in New York than in other American states and territories. While its per capita debtor incarceration rates were similar to those in other major commercial states, New York imprisoned debtors longest and most frequently relative to criminals (Figure 1; Table 2), and its laws gave creditors the most expansive rights to imprison their debtors (Coleman 1974:103; Ciment 1992:223–6). Moreover, New York was the first major commercial jurisdiction—American or European—to abolish imprisonment for debt (Table 1).[5] As such, it was immune to policy learning and diffusion. The pattern of deep institutionalization and early deinstitutionalization of CIDD in New York suggests that the causal process in question was both more thorough and more endogenous than elsewhere (George and Bennett 2005).

Second, as a relatively independent case, New York is ideal for evaluating competing accounts of variation and change in debtor law. For example, the embeddedness approach suggests that CIDD was abolished first in New York because it was there that the social sources of risk and uncertainty or the availability of alternatives to CIDD changed earliest or most markedly. This perspective does in fact provide a compelling explanation of increased debt litigation and debtor incarceration in New York and elsewhere between the 1780s and 1820s. As credit exchange became disembedded from personal affiliation, local norms against debt default weakened, and contract devices increased creditors' ability to litigate debt, they relied more heavily on CIDD for deterrence and restitution (Coleman 1974; Mann 2002). However, an exclusive focus on risk and uncertainty cannot provide an adequate explanation of CIDD's demise. Baker, Cosgel and Miceli (2012) argue that creditors abandoned the exercise and

[5] Kentucky was the first American state to abolish CIDD, but this reaction to the Panic of 1819 was quickly reversed and widely regarded both within and outside the state as a policy misadventure (Zackin 2012). Moreover, while abolition in New York followed Kentucky's by a decade, the earliest movements to abolish CIDD emerged in New York in the mid-1810s, and the first American legislation to abolish CIDD was introduced in Albany in 1817.

political defense of their right to imprison debtors when and where they gained better information about debtors (cf. Kagan 1984). But considerable evidence from New York counters this explanation.[6] Prison statistics attest that creditors continued to use CIDD widely right up until its abolition (Prison Discipline Society [1829–1831] 1855). Petitions to the State Assembly show that they also mounted a serious but unsuccessful political effort to reinstate CIDD (Figure 2; New York 1832b, 1833b, 1836b). Furthermore, abolition more likely drove rather than responded to the development of institutional alternatives. Creditors systematized ex ante screening through credit reporting and rating only in the 1840s (Olegario 2006; Carruthers 2013). Lawmakers expanded creditors' rights to seize debtors' property through bankruptcy, but only as creditors lobbied for new legal devices to replace CIDD (Ciment 1992:223–6; Balleisen 2001:86).

A class-based approach would suggest that CIDD was abolished first in New York because it was there that some group with an economic interest opposing it first overcame its politically established defenders. Indeed, several historians have argued that the extension of suffrage to propertyless white males in 1821 empowered the Workingman's Party to pressure establishment legislators to abolish CIDD by 1831 (Carlton 1908:339; Zorn 1951:177–81; Coleman 1974:121–2; Wilentz 1984:194–205). In fact, the Workingmen's Party in New York was highly factionalized, and disastrous elections in 1830 led to the party's effective disintegration (Zorn 1952:179). Evidence from petitions to the state legislature, then one of the most common tactics for bottom-up policy reform (Carpenter and Moore 2014), shows no sign of widespread, class-based mobilization leading up to abolition (Figure 2). To the extent that

[6] Moreover, the construct validity of Baker et al.'s (2012) measures—development of the publishing industry, literacy rates, professionalization—are by their own admission questionable (p. 224), and the argument cannot explain why more centralized and information-rich countries like England or France lagged behind Western American states and territories by many decades.

class-based interests played a role in the politics of debt collection, it was largely to forestall abolition. New York's communities of professional lawyers and conservative merchant creditors—generally the strongest defenders of CIDD—were particularly large and politically powerful (Fox 1919:357; Bauer 1935:147). As I show below, elite merchants sought to revise but maintain CIDD to their material advantage. Petition evidence shows that their political efforts grossly outweighed those of abolitionists (Figure 2).

My evidence reveals that the impetus for abolition largely transcended class. This was partly because the expansion of credit exchange decoupled the roles of creditor and debtor from economic classes. Many individuals, including workers and professionals, were at once creditors and debtors. As a result, no major political coalition shared a material interest in one particular debtor law over another (Ciment 1992:171–81). For example, while the Workingmen opposed CIDD, they also favored a mechanic's lien law that granted artisans preferential status as creditors (Coleman 1974:122). The pattern of reform evidences the relative influence of those who shared intellectual and moral rather than material interests in abolishing debtors' prisons (Bauer 1935:238). Voting records on major bills suggest broad-based rather than regionally or politically divided support for abolition (e.g. Table 3). Abolition was approached gradually through successive statutory exemptions from arrest, not for occupational groups or ownership categories, but rather for veterans, women, and the indigent (Coleman 1974:106-23). Finally, the changing political balance of class power cannot explain the deinstitutionalization of CIDD. The foremost defenders of CIDD quickly came to regard it as nonsensical (Weed 1883:380). At no point did subsequent shifts in the balance of political power between creditors and debtors reinstate civil incarceration for debt default. Rather, the demise of the debtors' prison was part of a deeply and broadly social, economic and intellectual transformation.

Third, the case allows not only for theoretical critique, but also for theory building. Durkheim's (2014) thesis accounts broadly for the emergence of restitutive debt collection. But it fails to specify a mechanism linking causes to that outcome, and fails to account for the pacification of credit exchange in terms of restitutive debt collection. Accounting for the abolition of CIDD in New York therefore adds explanatory power to Durkheim's thesis in two ways. It draws from institutional theory to illustrate a mechanism—moral politics—that links social and economic change to legal outcomes. And it synthesizes this thesis with current thinking about culture, violence and state formation to illustrate the sufficient (not simply necessary) conditions for the eradication of legitimate private coercion in exchange.

5. CIVIL CORPORAL RETRIBUTION, 1770–1800

In the early United States, debt default was seen as sinful and sacrilegious. What underlying structure of socioeconomic relations produced this moral outlook on default? How did it underpin a system of debtor law that authorized creditors to punish failed debtors by imprisoning them?

5.1 Default as Sin

Borrowing was common in eighteenth-century America. A limited money supply and the cyclical revenues of farmers and merchants made credit an early and important part of production and exchange (Sellers 1991:13). Most debts bore no monetary interest, and debtors tended to borrow to smooth expenditures rather than for entrepreneurial investment or speculation. As a result, it was widely believed that borrowing itself was evidence of a future ability to repay (Bauer 1935:289).

Localized, non-profit credit exchange grounded a distinct moral etiology of default. Because chain reactions of default were rare, explanations of default were individualized. The presumption of ability to repay suggested that defaulters were unwilling to repay. Cases of undeniable insolvency were ascribed to frivolous spending, the moral equivalent of unwillingness (Feer 1961:263–4). Standard language in debt suits referred to the defaulter as someone who "hath hitherto refused and still doth refuse to pay" (NYHS-M; cf. Blackstone [1766] 2002:473–4). In other words, default was strongly associated with theft and profligacy. The root cause of default was the debtor's "contempt for morality" (Albany Centinel 1798:2).

5.2 Default as Sacrilege

In the eighteenth century, debts tended to be open-ended and unsecured, and were usually contracted face-to-face between personal acquaintances. Because most loans were non-interest bearing, the price of the loan was social rather than economic—between equals, solidarity; between unequals, deference. Lending among social equals strengthened group boundaries. Into the late eighteenth century, large New York City merchants reproduced their incumbency by lending liberally among themselves and rationing credit to challengers (Ciment 1992:6–14). Similarly, rural credit between farmers and artisans was the currency of neighbors, with money reserved for strangers and the government (Mann 2002:17). Lending across class reproduced social hierarchy as creditors and debtors performed the charity and obligation of patron-client relations. In affidavits from the 1780s, debtors consistently referred to themselves as "held and firmly bound" to their creditors (NYHS-M). Gentlemen creditors even raised militias from the ranks of their debtors, who recognized them as military commanders (Anderson 2004:349).

The personal and extra-economic character of credit exchange gave default special moral consequences. Credit was seen as a gift, part of a system of "general exchange" that reproduced

group solidarity and status ordering (Mauss 2000). Consequently, debts were sacred bonds, and by extension, default was profanation and a threat to social order. Rural New Yorkers thought that default threatened "injury…to mankind" (Philanthropos 1786:2). Likewise, New York City merchants feared that degrading the creditor–debtor bond would mean "their ruin as a body" (Broome 1786:2).

5.3 Incarceration as Punishment

Creditors and debtors in the eighteenth century may have differed in their opinions of particular cases, especially their own. But they shared basic reasoning about the way in which morality and debt default were linked. This had two broad consequences for debtor law. First, it recommended the criminalization of default. The common-law precedent for CIDD was not punitive (Cohen 1982). But a variety of evidence shows how lawmakers, creditors, and debtors understood CIDD as retribution. Colonial statutes sanctioned the indefinite imprisonment of demonstrably insolvent debtors (New York [1771] 1820b:15–16; New York [1755] 1894 4:10).[7] Into the 1780s, affidavits regularly referred to defaulters' debts as "penal sums" to which they would, in submitting to incarceration, "confess judgment" (NYHS-M). Even relief laws postponed debtors' release from prison in direct proportion to the sum of their debts—roughly a year for every hundred pounds (New York [1770] 1894 5:120). In other words, the punishment fit the crime, and the measure of the crime was the magnitude of the obligation one had spurned.

Second, moral reasoning about credit exchange empowered creditors to a special role in the punishment of defaulters. Debtor law granted creditors broad discretion over whether and usually how long a defaulter might be incarcerated. This was not an artifact of a materially weak

[7] Until 1759, defaulters in New York City were imprisoned in the attic of City Hall, and because they were subsisted by neither the state nor their creditors, inmates often hung bags or old shoes from their cell windows in order to receive alms from passers-by (Klein 1920:33; Mann 2002:86–7).

state. Courts issued warrants in debt suits and sheriffs implemented arrests and detentions. Nor was CIDD state-sanctioned personal revenge. Rather, civil incarceration extended the original social functions of the loan. Among their peers, creditors reaffirmed the moral precondition of group life—trust—by exacting retribution on the untrustworthy. For debts between social unequals, the power to punish or pardon performed the patron's domination of their client, thereby reinforcing status hierarchies. In both cases, the legitimate use of corporal force to uphold credit agreements reflected the integrative importance of credit exchange. The delegation of decision-making about state violence to creditors reflected their moral authority relative to state actors. Creditors' morality made them the proper evaluators of morality in others. By empowering creditors to undertake civil, corporal retribution, lawmakers were "defending the only social order they could conceive of" (Wood 1993:251–2).

6. CIVIL CORPORAL RESTITUTION, 1790–1820

Eighteenth-century moral reasoning about credit exchange and debt default was firmly established, and the laws and practices it recommended were strongly institutionalized. Merchants, public intellectuals and even imprisoned debtors believed that CIDD was a natural and timeless right of creditors (Ciment 1992:161). Social reform organizations worked to subsist imprisoned debtors but refrained from criticizing the moral or legal foundations of CIDD (Bauer 1935:126; Coleman 1974:115–7). Even as late as 1814, the most prominent debt relief group in New York maintained that CIDD was "a justifiable punishment of the debtor" (Humane Society of the City of New York 1814:3). Consequently, as credit exchange expanded quickly in the 1780s and 1790s (Fischer 2010:61–3), debtor incarceration became much more common (Mann 2002:78–108).

Eventually, however, economic relations between creditors and debtors changed qualitatively. These changes destabilized longstanding moral assumptions about default. A younger generation of merchants and entrepreneurs vied with older incumbents to promote a new moral image of default and to reshape debtor law according to it. What structural changes occasioned this disruption in the moral background of credit exchange? How did moral politics among commercialists lead to legal change?

6.1 From Sin to Risk

In the early decades of the nineteenth century, debt was democratized. Farmers, artisans, and manufacturers borrowed for commodity production, and often sold on credit at the same time. Deeper and more complex networks of credit meant that most people's everyday exposure to economic volatility grew (Levy 2012). One in five American householders would become insolvent in their working life (Coleman 1974:287). In New York, between one third and one half of all debtors at some point defaulted on a debt (Balleisen 2001:3). Default was most common among merchants, but records from insolvency proceedings suggest that even in highly commercialized regions, around half of defaulters were manufacturers, artisans, professionals, farmers, and wage laborers (Balleisen 2001:7).

New patterns of failure challenged longstanding assumptions about the causes of default. Creditors struggled to account for the breaking of large numbers of evidently earnest, prudent, and hardworking debtors in terms of sin. Individualized explanations of failure diversified. Diaries and popular fiction included character and plot conventions about untrained neophytes, overreaching entrepreneurs, and reckless speculators (Sandage 2005:47–59). These codified new connections between personal character and economic causality. But environmental explanations emerged to rival individualized ones (Mann 2002:46–7, 82–3). Between 1790 and 1829, the U.S.

economy experienced four financial panics and seven recessions (Davis 2006). For the first time, default *en masse* appeared to follow from "misfortunes which no human wisdom can guard against" (Fay [1811] 1835:35). By increasing financial interdependence, market development was manufacturing risks for anyone who borrowed or lent (Beck 1992).

6.2 From Obligation to Interest, From Trust to Confidence

In the early nineteenth century, economic actors also began to use credit differently in three important ways. First, the familiarity of lending deteriorated. New York City merchant cliques became porous and impersonal (Ciment 1992:23–65). Lending also became delocalized, and an emergent national credit market became known as the "credit system" (Balleisen 2001:5). Second, debt was formalized. Bills of exchange replaced book debts, and these were interest-bearing and more easily litigated (Mann 2002:10–12). Third, the purposes of borrowing and lending shifted from primarily social to primarily economic. Interest made lending profitable, and new banks lent more liberally and more aggressively while older ones followed suit or perished (Hammond 1957).

As debts became depersonalized, formalized, and profitable, their status as moral obligations came into question. Between the 1790s and 1810s, legal records of both rural and urban debt litigation increasingly referred to "contracts" rather than "promises" and "bonds," to "monies due and owing" rather than "penal sums" (NYHS-M; NYHS-R). Seen as joint hazards, debts expressed mutual self-interest and implied mutual mistrust (Balleisen 2001:69–73, 96-8). Because debts no longer reproduced in-group or patron-client relations, default no longer threatened them. As such, the idea that debt default was sacrilegious faltered.[8]

[8] This transformation parallels the rise of self-interest as a paradigm for social order observed by Hirschman (1977). Around this time, the term "business man" entered the American lexicon, supplanting "gentleman" as the popular honorific for the consummate citizen (Sandage 2005:71–3). The word "commerce" newly referred to everyday

Ideas about social order itself changed, increasingly centering on economic growth (Dobbin 1994). But new dynamics of default also reshaped thinking about the relationship between growth and debt default. Even as debts ruined thousands of individuals, the credit system flourished and a commercial republic thrived. By 1831, Tocqueville ([1840] 1988:622) observed that Americans saw economic life "as a vast lottery in which a few men daily lose but in which the state constantly profits." Disorder followed not from "the ruin of a few, which is soon made good, but apathy and sloth in the community at large." The source of social cohesion shifted from trust between specific exchange partners to "confidence" in the system of exchange. The micro-foundations of this shift are exemplified by the widespread issuance of assignable credit instruments such as bills of exchange (Mann 2002:10–2). These blurred the lines between credit and money—that is, between a relational agreement based on dyadic trust and a collectively constructed institution based on shared belief. Individual failure did little to erode systemic confidence, and so opprobrium was unwarranted.

6.3 From Punishment to Coercion

Market development dislodged long-standing moral reasoning about default. Amid this disruption, two cohorts of the merchant class worked with judges and legislators to refashion debtor law. They used new but equally moral arguments to make their case. Frustrated with the conservative lending of older elite creditors, younger challengers opened new banks all along the eastern seaboard (Hammond 1957). In 1790, New York City had one bank—by 1825 it had a dozen (Ciment 1992:1-56). They lent more liberally and accepted default as a matter of course. This new approach to lending accompanied a shift in jurisprudence. Commercially progressive judges abandoned the notion of "sanctity of contract" and embraced the idea of "efficient

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exchange, not just the business of merchants; in some uses it was synonymous with "society" itself (Wood 1993:338–9).

breach" (Horwitz 1977). The policy of efficient breach held that contracts should be enforced only in the manner and to the extent that maximized their creation.[9] It recognized a new divergence between creditors' private interest in enforcing agreements and the public's interest in promoting entrepreneurial growth through risk-taking, and elevated the latter over the former (Novak 1996). Noting the laxity of New York's debtor laws, Tocqueville (1988:224–5) observed that "the public conscience has a sort of guilty tolerance for an offense which everyone individually condemns." In other words, by the early nineteenth century, progressive merchants had successfully institutionalized the ideas that default was a private wrong, not a public one, and that debtor law should be restitutive in nature, not retributive. In 1817, a grand jury assembled to inspect New York City's prisons "deprecate[d] the idea that a debtor's jail should be rendered a place of punishment" (Weeks 1817:2).

The decriminalization of default was an important shift in moral reasoning about credit exchange. But it had limited effects on the actual policy and practice of imprisonment for debt. The reasons were twofold. First, conservative, incumbent merchants who were reluctant to relinquish their right to imprison debtors mounted a moral defense of the institution. They cast defaulters as more artful and enterprising than their eighteenth-century counterparts. Indeed, many debtors absconded westward to escape their creditors, not least a standing U.S. Supreme Court Justice (Warren 1935:13; cf. Harding 1890:33). The more common suspicion, though, was that debtors concealed or embezzled assets that could be used as repayment (NYHS-M; NYHS-R). An influential commercial commentator observed that "[e]verybody who has the least experience in [lending] knows the extreme facility with which personal property […] is covered, so that neither search of the creditor nor the eye of the law can detect it" (Cautus 1817:1).

[9] Not all contracts were created equal—see Steinfeld (2001) for evidence on the stricter enforcement of labor contracts.

Conservative jurists embraced the moral imagery of failed debtors as strategic defaulters, and used it to reframe CIDD as a coercive instrument. In an 1819 report to the legislature, the state's Supreme Court argued that debtors' "frauds upon property" were occurring "incessantly" and were "equally immoral and distressing" as "more open or direct invasions of property by acts of a criminal nature" (New York 1819a:153–4). Without "such means of coercion" as CIDD, they argued, debtors "would be entirely lawless, without any power in the creditor to obtain justice." Creditors claimed the moral authority to identify fraud, not because they were morally exemplary themselves, but rather because they possessed special knowledge of the market.

Second, progressive and conservative merchants shared a class interest in exempting themselves from CIDD rather than abolishing it altogether. They pressured judges to expand the "bounds" of debtors' prisons to town, county or even state borders, but these privileges accrued only to those with peers able to pay hefty bail (Prison Discipline Society [1830] 1855:374–5; Bauer 1935:192; 214–5; Mann 2002:293 n. 42). New York's uniquely generous bankruptcy laws were accessible only to those well-positioned debtors who could secure the assent of their creditors (New York 1819a:153).[10] Merchants opposed similar relief for poor and middling debtors on the grounds it would create moral hazards. Existing laws that relieved debtors from lengthy imprisonment were already "the source of a great deal of fraud and perjury," they argued, that weakened the "security of debts, and confidence in contracts" (New York 1819a:152–4). As a result, New York did more than any other state to exempt large debtors from incarceration (Prison Discipline Society [1830] 1855:404–5). Meanwhile, imprisonment of artisans, farmers, and wage earners increased (Mann 2002:106). CIDD flourished as a system of civil, corporal restitution. By 1829, four in five prisoners in county jails were debtors (Table 2).

[10] The class-specific character of debt relief is further reflected in New York's 1811 creation of limited liability (Moss 2002:53–84).

7. CIVIL PROPRIETARY RESTITUTION, CRIMINAL CORPORAL RETRIBUTION, 1810–1840

Market development ushered in a new method of moral reasoning about debt default that recommended a restitutive approach to debtor law. But this did not bring about the end of imprisonment for debt. Rather, moral thinking about default remained compatible with a system of civil, corporal coercion. On its own, then, increased complexity and interdependence in credit markets was an insufficient though necessary condition for ending CIDD.[11] What social changes were in fact adequate to bring about its demise?

In the early nineteenth century, changes in the political relations between creditors, debtors, and the state disrupted the moral foundations of civil incarceration. A diverse network of actors distinct from the merchant class sought to revise moral thinking about violence in the market, and agitated for the abolition of imprisonment for debt. How did changes in the American polity and state occasion a moral reexamination of civil incarceration? How did advocates of abolishing CIDD succeed?

7.1 From Perverse Actors to Perverse Institutions

American state formation in the early nineteenth century prompted a reexamination of the moral foundations of American legal institutions. Emerging victorious from the War of 1812, lawmakers brimmed with self-confidence in American commercial strength and republican virtue. But they feared the political influence of the English common law system they had inherited. Because American laws were "modeled after the institutions of the mother country, without regard to the principles on which they [were] founded," the United States, lawmakers believed, remained "in many respects as far behind true liberty" as their former colonizer (New

[11] This helps explain why abolition did not occur first in England, where credit markets and capital accumulation were more advanced than in the United States (Lester 1995).

York 1830b:2). In response, they made a nationalist project of legal rationalization (Friedman 2005:66). In New York, they sought to "show to the world a system of laws, perfected on the basis of correct principles" (New York 1832b:7).

Rationalizing debtor law was one of the highest priorities. Doing so revealed biases in its conception of moral hazards that favored creditors. Mercantile defenders of CIDD maintained that the threat of imprisonment was "a stimulus to industry" and that debt relief encouraged recklessness and sloth (New York 1833b:13, 24). But rationalist legislators noted that CIDD also posed moral hazards in the opposite direction—imprisonment was so daunting that it caused insolvents to contract additional debts and impelled otherwise honest debtors to fraud (New York 1831b:32). As an explanation for fraud, the perversity of debtor law rivaled that of debtors.

Legal rationalists also noted that civil incarceration created moral hazards for creditors. Undue faith in their power to collect coercively led creditors to lend unscrupulously, driving the credit system toward crisis (Ciment 1992:235; Balleisen 2001:97). In this sense, the severity of corporal restitution perverted credit exchange from both sides of the transaction. The debtors' prison not only bound the body of the debtor—it shackled the invisible hand. By expanding the conception of moral hazard, legal rationalization challenged merchants' moral etiology of strategic default, as well as their conception of the moral consequences of debtor law.

7.2 From Confidence to Independence, From Civil Discretion to State Authority

Early nineteenth-century New York also experienced a wave of political democratization. The extension of suffrage to propertyless white men in 1821 undermined the political status of the gentry and the merchant elite (Fox 1919). The decline of indenture and the abolition of slavery in 1827 greatly expanded personal freedoms. These trends both reflected and advanced the sacralization of civic equality, economic independence, and personal liberty (Wood 2009).

Political democratization challenged conceptions of social order based solely on free contracting and economic confidence. As New York lawmakers saw it, the "natural, moral, and paramount obligations" among people were not those privately contracted between individuals (New York 1831b:8–10). Rather, "sacred" debts were those due "from an individual to himself and to his country." Foremost among these was the free exercise of mind and body. While the sanctity of personal liberty derived from nature, its inalienability derived at least in part from society. In "civilized communities, and particularly under a government like ours," lawmakers argued, personal liberty, "although in a manner appertaining to individuals, still belong[s], in a great degree, to the public." It was the job of "well regulated governments" to sustain social order by preserving and enforcing personal liberty.

Political democratization coincided with penal state building in New York. This prompted lawmakers to delineate the terms under which personal liberty could legitimately be curtailed. The prisons at Auburn and Sing Sing, opened in 1816 and 1828 respectively, were international flagships of carceral discipline whose institutionalization helped clarify the moral scope and function of corporal force (Beaumont and Tocqueville [1833] 1964). By 1831, the legislature held that it was "now a settled maxim among enlightened men, that '*imprisonment is only justifiable when it is intended as punishment for an offence committed, or to prevent the committing of an offence*'" (New York 1831b:4). The penitentiary system crowded out the restitutive conception of incarceration. Prison was for punishing, punishment was for criminals, and debt default, as merchants had urged, was not a crime.

At the same time, state actors moved to define economic crime and institutionalize criminal procedure. Statutes criminalizing fraud had emerged in the mid-eighteenth century, but remained underdeveloped and unused (Coleman 1974:114). In the early nineteenth century, New

York legislators honed the conception of criminal fraud. The "*moral turpitude*" of the debtor began "where his *honesty* ends: and it is only *then*," they argued, that he became "justly obnoxious to punishment" (New York 1833b:12). The criminalization of fraud undermined merchants' claim that civilly discretionary imprisonment was necessary to ferret out fraud. If debtors were alleged to be lying, it was the state that properly evaluated this claim and meted out punitive carceral discipline accordingly.

7.3 From Persons to Property

State formation and political democratization challenged mercantile arguments about the moral causes of default. More importantly, it undermined their reasoning about the moral consequences of civil incarceration. A loose-knit and diverse network of actors distinct from the merchant class worked to consolidate a new moral basis for debtor law. This network combined liberal social reform groups, political radicals, and imprisoned debtors. They employed a diversity of tactics. Liberal groups like the Friends of Liberal Principles and Equal Rights in Rochester demonstrated against imprisonment for debt, shamed creditors who incarcerated their debtors, and pressured judges to grant artisans and workers the expansive prison bounds they gave to wealthy merchants (Bauer 1935:126–35; 293–4; Ciment 1992:236; Coleman 1974:128–9, 236). Mostly, though, advocates of abolishing CIDD waged a war of ideas. The Prison Discipline Society in Boston published influential national reports on debtors' prisons and commentaries by politicians, sheriffs, and social critics (Prison Discipline Society [1829–1835] 1855). Radical lawyers such as Joseph Fay (1818; [1811] 1835) and Thomas Herttell (1823) wrote vociferous treatises against CIDD that circulated widely. In New York, imprisoned debtors

themselves published several sporadic but well-read newspapers.[12] By the 1820s, editors of major newspapers and commercial magazines took frequent letters and published dozens of editorials about imprisonment for debt (Bauer 193:196–7). CIDD abolitionists were only minimally coordinated, and a minority of them held a material interest in ending imprisonment for debt. But they leveraged new moral thinking made possible by democratic state building to argue for abolishing CIDD. Their influence is evidenced by legislative discourse and the pattern of legal change.

Abolitionists argued that debtor law rested on exaggerated claims of debtor immorality and created more moral hazards than it solved. They made their case by documenting the dismal returns on coercive incarceration. The Prison Discipline Society ([1829] 1855:251), for example, showed that in New York City in 1828, 1,085 imprisoned debtors owed some $25,409, of which only $295 was recouped—a collection rate of 1.16 percent.[13] Meanwhile, half of imprisoned debtors in New York spent more than 10 days in jail, and a third spent more than a month (Figure 1). Evidence of its restitutive inefficacy led prominent commercial commentators to renounce CIDD (Niles 1823 23:321). Debtors, they argued, wanted to repay their debts and indeed struggled feverishly to do so. Credit exchange had become so broadly and deeply a part of everyday life that the discipline of repeated transactions had broadly inculcated a habitus of creditworthiness, one that naturalized contractual performance as self-interested (Wilentz 1984:44–5). New York legislators who were set on rationalizing commercial policy gradually came to accept this new moral image of debtors, regarding strategic default as the exception rather than the rule. By the 1830s, they saw "the idea that the person of the [debtor] possessed

[12] While often polemical or sensationalist, abolition literature was also remarkably sophisticated, excerpting and commenting upon the writings of European intellectuals such as Daniel Defoe, Samuel Johnson, Edmund Burke, Jeremy Bentham, and Cesare Beccaria (Bauer 1935:89-90, 238-9; Mann 2002:105).
[13] The group's estimates of collection rates elsewhere that year ranged from 0.07 to 1.5 percent.

any valuable quality by which the claims of a creditor could be satisfied" as "exploded" (New York 1832b:4).

Abolitionists also argued that CIDD profaned sacred liberties, with dangerous consequences for social order (Fay 1818, [1811] 1835; Herttell 1823). The existence of CIDD made one's body implicit collateral on any debt. Because debtors owed their personal liberty to the state, they had no right to offer such collateral. The imprisonment of non-criminal debtors therefore divested society of autonomous political and economic subjects, creating "civil death" (Niles 1822 22:316).[14] Lawmakers in New York gradually came to see personal collateralization as an elementary social ill, comparing it to suicide (New York 1831b:9; 1833b:2–8). In a liberal democratic polity, CIDD was an affront to "*moral principle*" and a threat to "the *righteous spirit* of the Constitution" (New York 1833b:24; cf. 1830b:2–3).

Finally, abolitionists argued that civil incarceration vested creditors with moral powers rightly retained by the state. Treatises against CIDD cast it as a legal aberration, arguing that it had "crept into the English law, under the auspices of royalty and aristocracy, and in direct opposition to Magna Charta" (Fay 1818:11). New York lawmakers gradually embraced this historiography and its political implications. Governor DeWitt Clinton admitted in 1818 that in the case of CIDD, the law had "departed from its general policy" because it "authorized" creditors "to wield the power of punishment" that was properly vested in the state (New York 1818a:13). By 1831, the State Assembly issued a report framing the English history of CIDD as a conspiracy between kleptomaniacal monarchs and corrupt judges (New York 1831b:24-5). Lawmakers linked the tyrannical origin of CIDD to its tyrannical potential, fearing that it made creditors "*petty despots*" possessed of juridical and penal powers "which the free principles of

[14] It even threatened the operation of the state itself: several U.S. Congressmen were allegedly impeded from occupying their seats for fear of arrest for debt default while traveling to the capital (Warren 1935:67–8).

our institutions declare to be sacred" (New York 1831b:3; 1833b:22). By criminalizing fraud and elaborating and enforcing procedural due process, state actors saw themselves as consolidating their authority over creditors to define, identify and punish economic immorality (New York 1821b:163-173; 1831b:3–7; 1833b:22).

Market development and state formation combined to reshape the moral background in ways that precluded older defenses of the debtors' prison and facilitated new arguments for its abolition. In 1817, Martin Van Buren, then a State Senator, introduced the first legislation to abolish CIDD. After gradually increasing exemptions from arrest, the State Assembly voted in 1831 to abolish CIDD by a margin of 80 to 25 (Bauer 1935:234; Coleman 1974:122). Cross tabulations of votes show that the upstart Anti-Masonic Party provided important support for abolition in Western counties, and commercial elites in Albany continued to represent the strongest defense of CIDD. Nevertheless, a majority of both parties in every region of the state supported abolition (Table 3).[15] In other words, while advocates' moral-political efforts were necessary to the process of institutional change, the demise of the debtors prison ultimately reflected changes in the moral background that had universal effects. This is further evidenced by the deinstitutionalization of CIDD. Figure 2 presents data on petitions to the State Assembly on the subject of debt collection. It shows that while no organized lobbying preceded the abolition of CIDD, conservative creditors mounted an impressive effort to persuade legislators to reinstate the practice. Lawmakers rebuffed these efforts, arguing that no amount of political pressure could warrant a departure from reason, justice, and constitutionalism (New York 1833b:9–10; 1836b). After 1831, John Quincy Adams was the only prominent American lawmaker who openly defended the debtors' prison (Bauer 1935:260). Within two decades,

[15] Logistic regression models of voting behavior, available upon request, show no stable demographic or commercial patterns in legislators' support for abolishing CIDD.

commercial leaders in Albany came to view their prior defense of CIDD as "preposterous" (Weed 1883:380). At an accelerating rate, American states and European nations followed suit in permanently abolishing CIDD (Table 1).

Importantly, the same moral background that led to the demise of the debtors' prison guided lawmakers' searched for institutional replacements. The social and political leveling of relations between creditors and debtors had redistributed moral responsibility for preventing default. Creditors were expected to abide by the principle of *caveat emptor*, and default was seen as a relational failure rather than an individual one (New York 1831b:7). This inspired a twofold model for debtor law. First, lawmakers encouraged creditors to secure debts on property rather than on persons. Indeed, more creditors began to demand collateral *ex ante* in more debt contracts (Mann 2002). But contract law only rarely granted creditors access to debtors' non-contracted property upon default (Ciment 1992:223–6; Balleisen 2001:86). As lawmakers came to see property as "the only means to satisfy a pecuniary demand," they regarded this inability as "evil" (New York 1832b:2, 4). They pacified restitution by replacing civil incarceration with civil seizure—exemplified by the gradual expansion and institutionalization of bankruptcy laws that were voluntary and universally accessible and which discharged debts upon the forfeiture of specified assets.

Second, lawmakers encouraged creditors to apply the price mechanism more liberally and systematically to account for risk. While some argued that the solution was in creditors' discretionary rationing of credit, others again attributed the problem to perverse commercial law—specifically, usury restrictions (New York 1833b:14). Drawing heavily on Bentham's *A Defence of Usury* ([1787] 2014), legal reformers in New York linked campaigns to abolish both CIDD and interest rate caps "as if they were twin projects of the enlightenment" (Bauer

1935:206). The legalization of risk-based pricing in turn stimulated the rapid mid-19th-century development of ex ante evaluative mechanisms like credit reporting and rating (Olegario 2006). This complex of institutions—bankruptcy, risk-based pricing, and credit reporting—would form the backbone of modern financial contract enforcement.

8. CONCLUSION

The abolition of imprisonment for debt is an understudied historical case that has important implications for sociological theories of legal modernization. It offers evidence that broadly supports Durkheim's (2014) basic framework for explaining the rise of restitutive law as a product of increasing economic complexity and interdependence. But it also highlights the limits of that framework. Theories that treat morality as integrated but heterogeneous better explain the dynamics of moral change (Abend 2014). Theories of institutions that emphasize rupture, contestation, and reconstruction provide a more compelling account of how shifting moral views lead to change in the law (Fligstein and McAdam 2012). Durkheim's (2014) theory of legal modernization benefits greatly from identifying concretely the actors and processes that actually produce correlations between moral and legal forms (Hedström and Swedberg 1998). But contemporary theories in turn benefit from Durkheim's insights into the structural drivers of long-term changes in moral and legal reasoning (Abend 2014:66; Strand 2015).

The history of the debtors' prison also shows that an exclusive focus on restitutive law obscures the additional requirements of pacifying credit markets (Elias 2000). These were above all moral, not material. The state's capacity to enforce contracts coercively in one thing, and another is the state's authority to define official immorality and establish its exclusive correspondence with state violence. An understanding of state formation that attends to the consolidation of moral authority by state actors is necessary to explain how they expropriated

discretion over the use of legitimate violence from non-state elites and built new, more general legal relationships between subjects and the state (Bourdieu 2015; de Carvalho 2016). If the modernization of debtor law depended equally on the development of the market and the state, the two are equally "explicitly moral projects" (Fourcade and Healy 2007:299).

The analysis also suggests lines of theory building and empirical research in economic sociology and criminology. Economic sociologists tend to explain how networks, institutions, and norms successfully elicit the voluntary fulfillment of exchange agreements—in other words, "how it can be that those who pursue their own interest do not do so mainly by force and fraud" (Granovetter 1985:488). A large literature in law and society mirrors this line of inquiry (Macaulay 1963; Ellickson 1991). However, the history of imprisonment for debt shows that in certain contexts, the enforcement of private economic agreements is at times quite common, and may even entail physical force. Evidence suggests that debt collection is becoming more common and more aggressive— between 1972 and 2010, the 2015 U.S. dollar value of all receipts from debt collection agencies increased from 1.3 billion to 8.7 billion, and between 2002 and 2012, consumer complaints against third party debt collectors, normalized for industry employment, increased more than three-fold (Fedaseyeu and Hunt 2014:33–4). Understanding the causes and consequences of wage garnishment, eviction, and other methods for eliciting the involuntary performance of voluntary economic agreements is necessary to develop a full account of how contemporary markets for credit, housing, and other goods actually work (Volkov 2002; Deville 2015; Desmond 2016).

Finally, the study prompts questions about the relationship between market institutions and penal institutions. The abolition of imprisonment for debt was an important episode in the genesis and differentiation of commercial institutions like voluntary bankruptcy on the one hand,

and economic crime and punishment on the other (Kadens 2010). However, recent trends in debtor law and penal practice suggest that the boundaries between restitutive and retributive institutions clarified in the nineteenth century may once again be blurring (Roberts 2014). One the one hand, recent consumer bankruptcy reform in the United States has been marked by intense disputation over the moral causes of debt default (Sullivan, Warren and Westbrook 2006). This has revitalized punitive conceptions of debtor law, or at least made them more explicit. As U.S. Senator Paul Wellstone said in regard to the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act, "[t]his is a debate about punishing failure" (U.S. Congress 2001:13132). On the other hand, the increased use of punitive fines and prison fees has led to the imprisonment of a growing number of individuals for the non-payment of so-called "legal financial obligations" (Harris, Evans and Beckett 2010, 2011; Harris 2016). This had led to considerable discussion of the "return of debtors' prisons" (e.g. American Civil Liberties Union 2010). What moral background underpins this new system of incarceration for debts to the state? What structural changes and political processes hold promise for reform?

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TABLES

Table 1. Laws Abolishing Civil Incarceration for Debt Default

Year	American Jurisdictions	European Jurisdictions
1821	Kentucky	
1831	New York	
1838	Ohio, Vermont	
1839	Alabama, Michigan, Mississippi	
1840	Louisiana, New Hampshire, Tennessee	
1841	Wisconsin, U.S. Federal	
1842	Connecticut, Indiana, New Jersey, Pennsylvania	
1843	Arkansas, Missouri	
1845	Illinois	
1849	Virginia	
1851	Maryland	
1857	Massachusetts	
1858	Georgia	
1866		Austria, France
1868	Florida, North Carolina, South Carolina	
1869		United Kingdom
1870	Rhode Island	
1871		Belgium, Germany
1872		Denmark, Ireland
1874		Norway, Switzerland
1877		Scotland, Sweden
1882		Italy
1893		Netherlands
1900		Greece

Sources: Kent (1848:398-400); McMaster ([1906] 1915:99–100); Warren (1935:52); Bauer (1935:261, 273-6; 294-8); Sgard (2006:407); Peebles (2013:702 n. 5).
Note: Jurisdictions listed abolished CIDD by diverse legal means; some not listed rendered it practically inoperative through cumulative impediments and exemptions.

Table 2. Composition of Incarcerations in Select Municipal and County Jails, 1829.

Jurisdiction	Debtors	Criminals	Percentage Debtors
Massachusetts	~3,000		
Ipswich	20	20	50.0
Salem	77	98	44.0
Taunton	126	83	60.3
New Bedford	21	21	50.0
Worcester	271	71	79.2
Sample total	515	293	63.7
New York	~10,000		
Pennyan	103	21	83.1
Chenango Point	78	13	85.7
Courtland Village	112	13	89.6
Charlestown	26	17	60.5
Buffalo	338	102	76.8
Sample total	657	166	79.8
Pennsylvania	~7,000		
Lebanon	17	22	43.6
Towanda	22	12	64.7
Chester	19	21	47.5
Beaver Co.	97	13	88.2
Union Co.	11	6	64.7
Norristown	28	21	57.1
Bethany	10	4	71.4
Sample total	204	99	67.3
Maryland	~3,000		
Cambridge	8	19	29.6
Denton	42	14	75.0
Baltimore	944	1,264	42.8
Sample total	994	1,297	43.4

Source: Prison Discipline Society ([1830] 1855:368, 403-5).
Note: Data are for December 30, 1828 to December 30, 1829, and were reported by local sheriffs upon request by the Prison Discipline Society. Statewide figures are the Society's estimates.

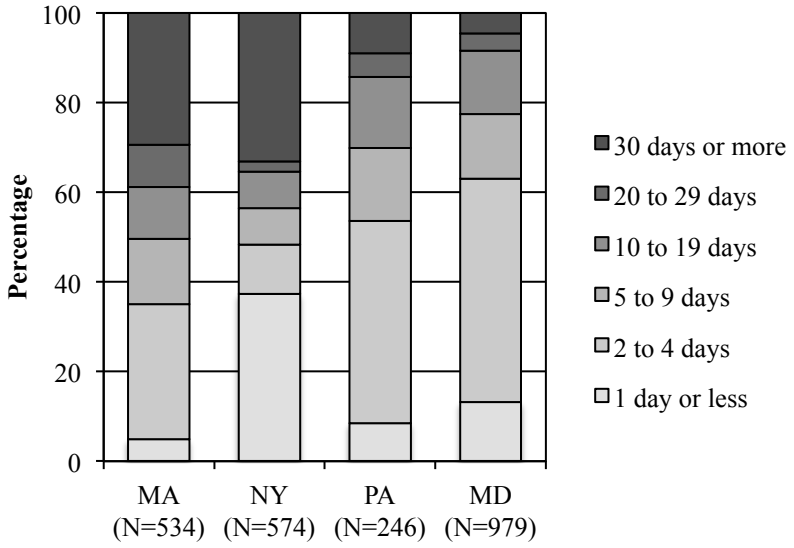
Table 3. New York State Assembly Votes to Abolish Imprisonment for Debt (1831), by Party and Region

	Democratic Party		Anti-Masonic Party		Party unknown		Total	
Region	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Northeast	7	1	0	0	0	0	7	1
East Central	11	9	0	0	0	0	11	9
Southeast	12	2	0	0	2	0	14	2
New York City	8	2	0	0	1	0	9	2
Central	9	6	1	1	0	2	10	9
West Central	3	1	14	0	1	0	18	1
West	0	0	11	0	0	1	11	1
Total	50	21	26	1	4	3	80	25

Source: New York (1831a:178–179, 559).
Note: Party affiliations are inferred from votes nominating a U.S. Senator from New York.

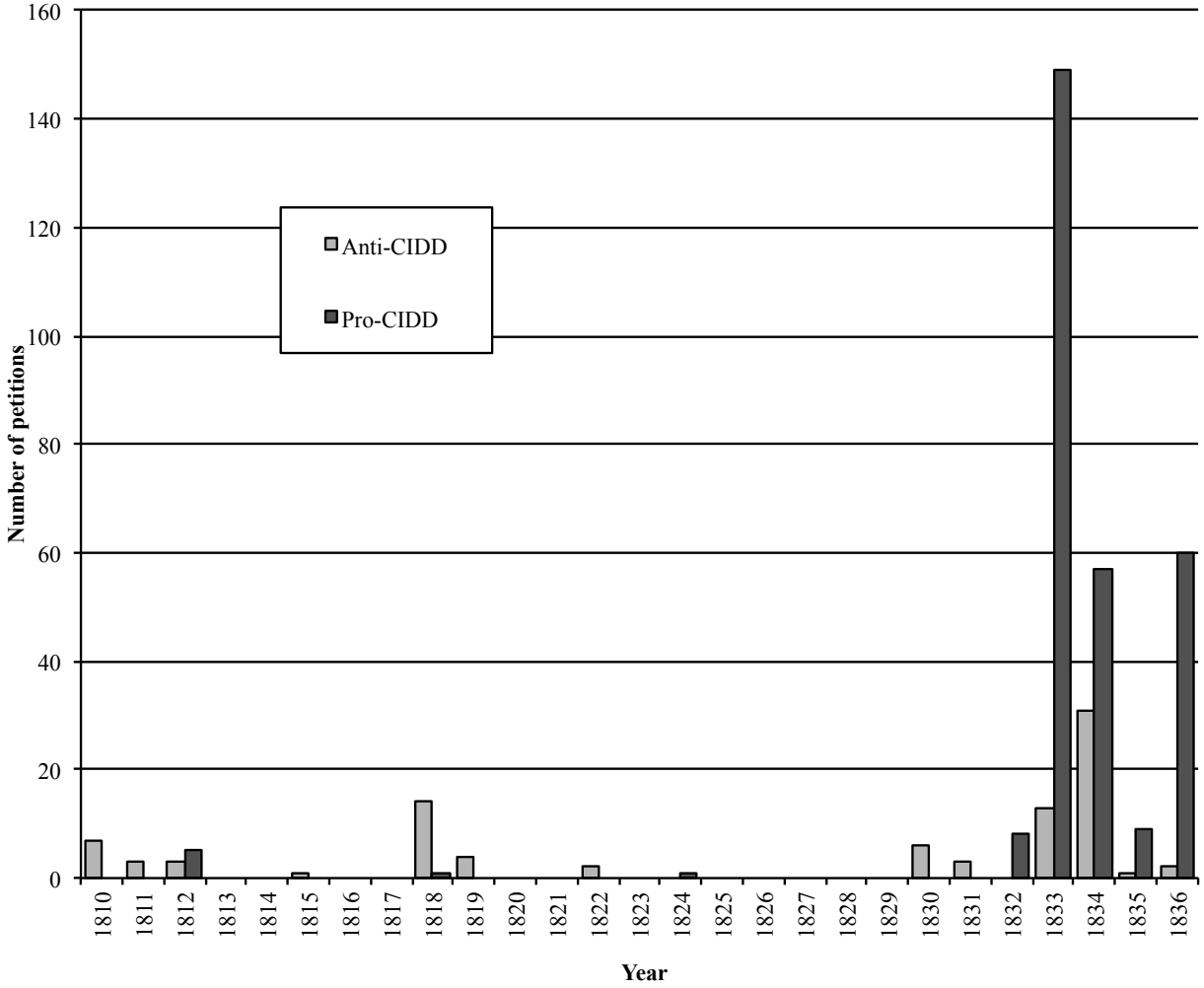
FIGURES

Figure 1. Debtors Imprisoned in Selected Jails by Length of Imprisonment, 1829



Source: Prison Discipline Society ([1830] 1855:404–5)
Note: Data are for December 30, 1828–December 30, 1829. Jurisdictions include: Ipswich
Salem, Taunton, New Bedford and Worcester (MA); Chenango Point, Courtland Village,
Charlestown, and Buffalo (NY); Lebanon, Towanda, Chester, Beaver Co., Norristown, Be
Union Co. (PA); and Cambridge, Denton, and Baltimore (MD).

Figure 2. CIDD-related Petitions to the State Assembly of New York, 1810-1836.



Source: New York (1810a–1825a, 1867a–1836a).
Note: Excludes ambiguous petitions and petitions for private relief. Data for 1826 are missing.